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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

BRETT K. BARBIC,

Defendant and Appellant.

B220756

(Los Angeles County  
Super. Ct. No. BA315948)

APPEAL from a judgment of the Superior Court of the County of Los Angeles,  
Ronald H. Rose, Judge. Affirmed.

California Appellate Project, Jonathan B. Steiner, Executor Director, Richard B.  
Lennon, Staff Attorney, under appointment by the Court of Appeal, for Defendant and  
Appellant.

No appearance by the Plaintiff and Respondent.

## **INTRODUCTION**

Defendant and appellant Brett Barbic (defendant) appeals from his conviction following a nolo contendere plea to kidnapping and carjacking charges. His appointed counsel filed a brief pursuant to *People v. Wende* (1976) 25 Cal.3d 436 (*Wende*), and defendant filed a letter brief challenging the validity of his plea and the effectiveness of his legal representation. Based on our review of that letter brief and examination of the entire record, we conclude that there are no arguable issues on appeal and therefore affirm the judgment of conviction.

## **FACTUAL BACKGROUND**

On January 15, 2007, at around 12:30 or 1:00 a.m., Varvan Abdulyan was driving his taxi in West Hollywood when defendant flagged him down. After initially telling Abdulyan to drive him to Ralph's, defendant directed Abdulyan to Poinsettia Avenue in the vicinity of Fountain Avenue. Defendant ordered Abdulyan to stop the taxi, robbed Abdulyan at gunpoint, and drove away in the taxi leaving Abdulyan on the street.

On January 20, 2007, at around 1:00 a.m., Amram Siso was driving his taxi near Sunset Boulevard and La Brea Avenue when defendant flagged him down. Defendant told Siso to drive him to Ralph's, and Siso requested directions. Defendant directed Siso to Poinsettia Avenue, told him to stop, and robbed him at gunpoint. After defendant saw two potential witnesses, he told Siso to continue driving. When Siso saw two or three police cars detaining someone, he accelerated in their direction. As he accelerated, he heard a gunshot in the back seat of the taxi. Siso stopped the taxi and approached the police officers who had heard the gunshot and were responding.

## PROCEDURAL BACKGROUND

In an information, the Los Angeles County District Attorney charged defendant in count 1 with kidnapping to commit another crime in violation of Penal Code section 209, subdivision (b)(1)<sup>1</sup>; in counts 2 and count 6 with second degree robbery in violation of section 211; in count 3 with attempted willful, deliberate, premeditated murder in violation of sections 664 and 187, subdivision (a); and in count 5<sup>2</sup> with carjacking in violation of section 215, subdivision (a). The District Attorney further alleged as to counts 1 through 3 that defendant personally discharged a firearm causing great bodily injury or death within the meaning of section 12022.53, subdivision (d), personally discharged a firearm within the meaning of section 12022.53, subdivision (c), and personally used a firearm within the meaning of section 12022.53, subdivision (b). The District Attorney also alleged as to counts 5 and 6 that defendant personally used a firearm within the meaning of section 12022.53, subdivision (b).

On March 20, 2007, defendant's counsel declared doubt as to defendant's mental competence to stand trial. After questioning defendant, the trial court also declared doubt and appointed two physicians to examine defendant and report their results. The trial court suspended the criminal proceedings against defendant.

On August 8, 2007, the trial court reviewed the reports from the appointed physicians and found defendant competent to stand trial. The trial court also granted the prosecutor's motion to amend the information by interlineation by striking the allegation that defendant discharged the gun causing great bodily injury under section 12022.53, subdivision (d) and substituting a gun discharge allegation under section 12022.53, subdivision (c). The trial court rearraigned defendant, and he pleaded not guilty and denied all the special allegations.

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<sup>1</sup> All further statutory references are to the Penal Code.

<sup>2</sup> The information did not allege a count 4.

On May 9, 2008, defendant appeared in the trial court and his counsel notified the court that defendant was unable to assist counsel in the defense of the action. The trial court suspended the criminal proceedings pursuant to section 1368 and appointed a physician to examine defendant and report to the court.

On July 29, 2008, the trial court reviewed and accepted the physician's report on defendant's competence and found him to be incompetent. The trial court entered an order committing defendant to Patton State Hospital.

On April 9, 2009, the trial court reviewed an extensive report from Patton State Hospital referring defendant back to the court as having regained competency. The trial court reinstated the criminal proceedings against defendant and rearraigned him. A plea of not guilty and a denial of the special allegations were entered on defendant's behalf.

On August 11, 2009, defendant entered into a plea agreement pursuant to which he agreed to plead no contest to kidnapping, a lesser included offense to count 1, to plead no contest to carjacking, and to admit the allegation that he personally discharged a firearm within the meaning of section 12022.53, subdivision (c), in return for a total sentence of 29 years 8 months. Defendant subsequently pleaded no contest to kidnapping on count 1 and carjacking on count 5 and admitted the gun discharge allegation.

On September 17, 2009, the trial court sentenced defendant to a total sentence of 29 years, 8 months comprised of an eight-year upper term sentence on the kidnapping charge, plus an additional and consecutive 20-year term under section 12022.53, subdivision (c), and a consecutive one-third the middle term sentence on the carjacking charge of one year and eight months.<sup>3</sup>

Defendant filed a notice of appeal from his sentence and a certificate of probable cause that was not acted upon by the trial court. He did not, however, appeal the validity of his plea.

On appeal, defendant's appointed counsel filed a brief pursuant to *Wende, supra*, 25 Cal.3d 436, asking this court to review the entire record to determine if any appealable

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<sup>3</sup> Defendant had no prior criminal record.

issue exists. On July 1, 2010, we directed defendant's counsel to send the record and the opening brief to defendant and granted defendant 30 days to submit by brief or letter any grounds of appeal, contentions, or arguments that defendant wanted this court to consider.

On July 29, 2010, defendant submitted a letter brief, asserting that his mental condition during the proceedings in the trial court prevented him from meaningful participation in the defense of this case and from understanding the proceedings against him. Defendant also contends that although his trial counsel represented that he would prepare a defense to the charges based on defendant's mental condition, trial counsel subsequently failed to do so and instead coerced defendant into accepting the plea agreement upon which his conviction and sentence are based.

## **DISCUSSION**

Pursuant to *Wende, supra*, 25 Cal.3d 436, we have conducted an independent review of the entire record and have determined that there are no arguable issues on appeal. We are therefore satisfied that defendant's appointed appellate counsel has fully complied with her responsibilities. (*Id.* at p. 441.)

Defendant, in his letter brief, disagrees. The substance of his claim is that his mental condition prevented him from understanding the proceedings against him and his trial attorney coerced him into accepting the plea agreement because the attorney was unprepared to defend the case based on defendant's mental condition. Defendant's claim can best be characterized as an attack on the validity of the nolo contendere plea.

Defendant's challenge to the validity of his plea is not cognizable on appeal because he did not receive the required certificate of probable cause from the trial court. "Section 1237.5 states broadly that '[n]o appeal shall be taken by the defendant from a judgment of conviction upon a plea of guilty or nolo contendere . . . except where both of the following are met: [¶] (a) The defendant has filed with the trial court a written statement, executed under oath or penalty of perjury showing reasonable constitutional,

jurisdictional, or other grounds going to the legality of the proceedings. [¶] (b) The trial court has executed and filed a certificate of probable cause for such appeal with the clerk of the court.’ (§ 1237.5, italics added.) ‘The purpose and effect of section 1237.5 . . . are . . . to create a mechanism for trial court determination of whether an appeal raises *any nonfrivolous* cognizable issue, i.e., any nonfrivolous issue going to the legality of the proceedings. Before the enactment of section 1237.5, the mere filing of a notice of appeal required preparation of a record and, in many cases, appointment of counsel; only after expenditure of those resources would an appellate court determine whether the appeal raised nonfrivolous issues that fell within the narrow bounds of cognizability. Section 1237.5 was intended to remedy the unnecessary expenditure of judicial resources by preventing the prosecution of frivolous appeals challenging convictions on a plea of guilty.’ (*People v. Hoffard* (1995) 10 Cal.4th 1170, 1179 [43 Cal.Rptr.2d 827, 899 P.2d 896] (*Hoffard*).)” (*People v. Johnson* (2009) 47 Cal.4th 668, 676.)

Moreover, to the extent defendant is claiming that he received ineffective assistance of counsel, that claim should be raised, if at all, in a habeas corpus proceeding. “‘We have repeatedly emphasized that a claim of ineffective assistance is more appropriately decided in a habeas corpus proceeding.’ (*People v. Mendoza Tello* (1997) 15 Cal.4th 264, 266-267 [62 Cal.Rptr.2d 437, 933 P.2d 1134]; *People v. Wilson* (1992) 3 Cal.4th 926, 936 [13 Cal.Rptr.2d 259, 838 P.2d 1212]; *People v. Pope* (1979) 23 Cal.3d 412, 426 [152 Cal.Rptr. 732, 590 P.2d 859].) The defendant must show that counsel’s action or inaction was not a reasonable tactical choice, and in most cases “‘the record on appeal sheds no light on why counsel acted or failed to act in the manner challenged . . . .’” (*People v. Mendoza Tello, supra*, at p. 266; *People v. Wilson, supra*, at p. 936; *People v. Pope, supra*, at p. 426.)’ (*People v. Michaels* (2002) 28 Cal.4th 486, 526 [122 Cal.Rptr.2d 285, 49 P.3d 1032].)” (*People v. Jones* (2003) 30 Cal.4th 1084, 1105.)

## **DISPOSITION**

The judgment of conviction is affirmed.

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MOSK, J.

We concur:

TURNER, P. J.

KRIEGLER, J.